

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WENDY GILLETTE,

Plaintiff,

Judge Sweet
Docket No.:
08 CV 00878

-against-

HILTON HOTELS CORPORATION and
HILTON INTERNATIONAL CO.,

Defendants.

ANSWER TO
PLAINTIFF'S
VERIFIED AMENDED
COMPLAINT

Defendants, HILTON HOTELS CORPORATION and HILTON INTERNATIONAL CO., by their attorneys, WHITE FLEISCHNER & FINO, LLP, as and for their answer to the plaintiff's verified amended complaint, respectfully allege:

1. Denies each and every allegation set forth in paragraphs numbered "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "72", "75", "76" and "78".

2. Denies knowledge and information sufficient to form a belief as to those allegations set forth in paragraphs numbered "1" and "2".

3. Upon information and belief denies those allegations set forth in paragraphs numbered "58".

4. Denies each and every allegation set forth in paragraphs numbered "4" except admits that plaintiff has demanded more than \$75,000 in her pleadings.

5. Denies each and every allegation set forth in paragraphs numbered "6", "70", "71", "74", "77" and "79", and leaves all matters of law to the honorable court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. Pursuant to CPLR Article 16, the liability of defendant, HILTON HOTELS CORPORATION and HILTON INTERNATIONAL CO., to the plaintiff herein for non-economic loss is limited to defendant's, HILTON HOTELS CORPORATION and and HILTON INTERNATIONAL CO.'s, equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. That by entering into the activity in which the plaintiff(s) was engaged at the time of the occurrence set forth in the complaint, said plaintiff(s) knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff(s) herein as alleged in the complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff(s) in his activities and such risks were assumed and accepted by him in performing and engaging in said activities.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Plaintiff(s) have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or

expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff(s) shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff(s), then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. The risks and dangers, if any, were open, obvious, notorious, and apparent.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. This case shall be dismissed under the doctrine of Forum Non Conveniens.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the complaint, were due to the acts of parties over whom the defendants were not obligated to exercise any control or supervision.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

13. That the Court herein does not have jurisdiction over the person of the

defendant, HILTON HOTELS CORPORATION and HILTON INTERNATIONAL CO., in that they were not properly served with the summons and complaint in the above action.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

14. Plaintiff failed to mitigate damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

15. That these answering defendants were without notice of any of the purported conditions alleged in the various complaints.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

16. That these answering defendants did not owe the Plaintiff any of the duties alleged in this lawsuit.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

17. That the plaintiff(s) failed to use safety devices available to the plaintiff(s) at the time of the events alleged in the plaintiff's complaint and the plaintiff's failure to use such devices was negligent and was a cause in whole or in part of the injuries sustained by plaintiff(s).

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

18. The risk, defect and/or danger, if any, was trivial.

WHEREFORE, defendants, HILTON HOTELS CORPORATION and HILTON

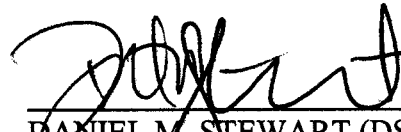
INTERNATIONAL CO., demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
March 25, 2008

Yours, etc.,

WHITE FLEISCHNER & FINO, LLP

By:

A handwritten signature in black ink, appearing to read 'Daniel M. Stewart', is written over a horizontal line.

DANIEL M. STEWART (DS 7989)

Attorneys for Defendants
61 Broadway, 18th Floor
New York, New York 10006
(212) 487-9700
Our File No.: 105-13049-D-PAF/DMS

TO: (See Attached Affidavit)

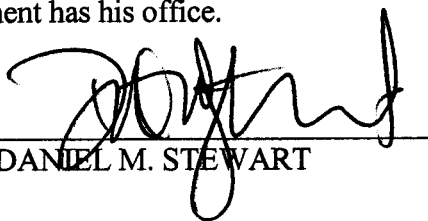
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

DANIEL M. STEWART, being duly sworn, deposes and says:

That he is the attorney for the defendant(s) in the within action; that he has read the within Answer and knows the contents thereof, and that same is true to his) own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

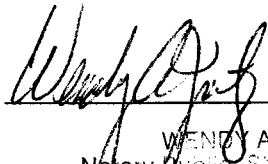
That the sources of his information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant(s) is that the defendant(s) is(are) not within the county where deponent has his office.



DANIEL M. STEWART

Sworn to before me this
25th day of March, 2008



WENDY A. JANTZ
Notary Public, State of New York
No. 010603412
Qualified in Richmond County
Commission Expires January 23, 2011

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

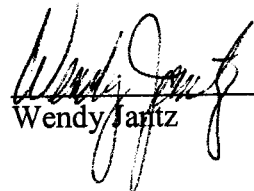
Wendy Jantz, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Staten Island, New York.

That on March 25, 2008, deponent served the within **ANSWER TO PLAINTIFF'S VERIFIED AMENDED COMPLAINT**, upon the attorneys and parties listed below by United States prepaid mail by placing same in a mailbox in the State of New York:

TO:

Ray Silverman, Esq.
Parker & Waichman, LLP
111 Great Neck Road, Suite 101
Great Neck, New York 11021
(516) 466-6500


Wendy Jantz

Sworn to before me this
25th day of March, 2008



LAUREN RICCIO MELTZER
NOTARY PUBLIC, State of New York
No. 01R15082855
Qualified in King County
Commission Expires July 28, 2009

Index No. 07-111017

Year

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WENDY GILLETTE,

Plaintiff,

-against-

HILTON HOTELS CORPORATION and
HILTON INTERNATIONAL CO.,

Defendants.

ANSWER TO PLAINTIFF'S VERIFIED AMENDED COMPLAINT

WHITE FLEISCHNER & FINO, LLP
Attorneys for DEFENDANT, HILTON HOTELS CORPORATION
61 BROADWAY
NEW YORK, N.Y. 10006
(212) 487-9700

To:
Attorney(s) for

Service of a copy of the within
Dated:

is hereby admitted.

.....
Attorney(s) for

PLEASE TAKE NOTICE



that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

**NOTICE OF
ENTRY**



that an Order of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at , on , at .

**NOTICE OF
SETTLEMENT**

Dated:

WHITE FLEISCHNER & FINO, LLP
Attorneys for
61 BROADWAY
NEW YORK, N.Y. 10006